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No. 85-660

In The
Supreme Court of the United States
October Term, 1985

THE STATE OF COLORADO,
Petitioner,
v.
FRANCIS BARRY CONNELLY,
Respondent.

BRIEF AMICI CURIAE IN SUPPORT OF THE PETITIONER BY THE COLORADO ATTORNEY GENERAL AND THE 35 AMICI THAT APPEAR ON THE INSIDE COVER

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QUESTIONS PRESENTED FOR REVIEW

1. Does the due process clause of the fourteenth amendment require suppression of a confession as "involuntary" absent any action by the police to elicit the confession?

2. Where a suspect is advised of his *Miranda* rights and admittedly understands them, is his waiver of rights involuntary solely because he psychotically believed that he had no choice but to confess?

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STATEMENT OF THE AMICI CURIAE

The *amici curiae* are officers or organizations of officers who have law enforcement responsibilities in their jurisdictions. Having obtained the written consent of the parties to the case, they file this brief in support of the petitioner pursuant to Sup. Ct. R. 36.2.

STATEMENT OF THE CASE

On August 18, 1983, Francis Connelly walked up to a uniformed, off-duty police officer in downtown Denver and said: "I . . . murdered someone and I want[ ] to turn myself in" (J.A. 2-4). The officer initially suspected Connelly was a "crackpot" (J.A. 4), but Connelly's dress and demeanor suggested to the officer that he was neither mentally unstable nor under the influence of drugs or alcohol (J.A. 5). The officer then gave Connelly *Miranda*[1] warnings and asked if he understood them (J.A. 6). Connelly said he did (J.A. 6) and told the officer that in late 1982 he had killed a young girl near West Mississippi Avenue in southwest Denver (J.A. 37).

The officer handcuffed the respondent, searched him cursorily (J.A. 6), and took him into a nearby newsstand where he checked Connelly's driver's license for identification (R., v. 2, p. 11). The officer then called the Denver Police Department for information to corroborate the respondent's story (R., v. 2, p. 12). A detective told the officer to keep Connelly there until the detective arrived (R., v. 2, p. 12).

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

The officer then again told Connelly that he did not have to talk (J.A. 7). Connelly responded "that it was all right, that he would talk to [the officer] because his conscience had been bothering him . . ." (R., v. 2, p. 16). The officer asked him if he had been drinking or using drugs (J.A. 7). Connelly said no (J.A. 7). The officer then asked if he had ever been treated for any mental disorders (J.A. 7). Connelly said he had been in several mental hospitals (J.A. 7).

The detective arrived about 15 minutes after the officer called (R., v. 2, p. 15). He ordered the handcuffs taken off, placed Connelly in the police car, repeated the *Miranda* warnings, and asked him what was on his mind (J.A. 11-12). Connelly told the detective that he had returned to Colorado from Boston because he wanted to confess to the murder of a young Indian girl, Mary Anne Junta (J.A. 12; R., v. 2, p. 25). The detective drove Connelly to police headquarters where records revealed that in April 1983 an unidentified female body had been discovered in the area Connelly described (J.A. 13-14).

Upon the detective's request, Connelly repeated to a police sergeant the story he had told the detective (J.A. 15). Connelly said the murder occurred in southwest Denver, somewhere near Mississippi Avenue, he thought, but he was not positive (R., v. 5, p. 27). He "openly came out and told [the sergeant and detective] that he would be glad to show [them] where it happened" (R., v. 2, p. 27).

The three men then drove toward southwest Denver (R., v. 2, p. 27). Connelly directed them to an alley behind some industrial buildings (R., v. 2, p. 29). "This is it," Connelly said as they walked up to a storage area

behind the buildings (R., v. 2, p. 30). This was where he stabbed the girl, covered her with a mattress, and left her, he said (R., v. 2, p. 31). He said he was frightened to be there; he appeared "nervous and cautious" (R., v. 2, pp. 30-31).

The district attorney charged Connelly with second degree murder, Colo. Rev. Stat. 18-3-103(1)(a) (1978) (R., v. 1, pp. 1-3). The district court ordered Connelly to undergo psychiatric examination to determine his competence to proceed (R., v. 1, pp. 4-6). The prosecutor and Connelly's attorney agreed that Connelly should also be examined to determine whether he "was competent at the time he was arrested and talked with Denver police officers" (R., v. 1, pp. 4-6).

In the psychiatrist's opinion, the confession was motivated by "command auditory hallucinations"[2] (R., v. 1, pp. 10-17; J.A. 24-26). The psychiatrist reported:

> The confession appears to have been the result of command auditory hallucinations which significantly impaired Mr. Connelly's mental ability to make free and intelligent decisions at the time immediately surrounding his arrest. Therefore, there appears to be significant doubt regarding Mr. Connelly's ability to have made a truly voluntary statement or confession to the police on August 18, 1983.

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[2]The psychiatrist testified: "[A] command [auditory] hallucination is . . . a type of hallucination in which the person experiencing it feels as if they have to act on whatever the voice is telling them" (J.A. 25). Connelly described the voice he heard as "God's voice" (J.A. 19).

(R., v. 1, p. 17). He testified, however, that Connelly's "illness did not significantly impair his cognitive abilities" (J.A. 25, 34-35).[3]

The district court suppressed all of Connelly's statements to the police (J.A. 49). Even though the Court specifically found "that there was nothing untoward in what the police did in receiving and recording [Connelly's] comments to them" (J.A. 43), the court concluded that all of Connelly's statements were involuntary because Connelly "did not exercise free will in choosing to talk to the police. . . . He was compelled by his illness to [confess]" (J.A. 47). The court further noted that the prosecution could not establish by clear and convincing evidence that Connelly knowingly, voluntarily, and intelligently waived his *Miranda* rights (J.A. 48).

On interlocutory appeal,[4] the Colorado Supreme Court affirmed the suppression of Connelly's statements, but relied on different grounds. *People v. Connelly*, 702 P.2d 722 (Colo. 1985). Whereas the district court suppressed all of Connelly's statements to the police on the ground that their admission into evidence would violate due process, the Colorado Supreme Court suppressed only Con-

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[3]In the course of his examination of Connelly, the psychiatrist elicited details of the crime as well as circumstances surrounding the confessions (R., v. 1, pp. 11-17). Connelly told the psychiatrist that he stabbed the girl with a fishing knife: "It was confusing [. . .] I don't know how it actually happened . . . I had the knife . . . the voice told me to kill her and I did . . . I don't know how many times I stabbed her . . ." (R., v. 1, p. 11).

[4]Colo. Rev. Stat. § 16-12-102 (1978) affords the prosecution the right to an interlocutory appeal of "any decision of the trial court in a criminal case upon any question of law." *See* Colo. R. App. P. 4.1.

nelly's initial statement as "involuntary"; it suppressed the remainder of Connelly's statements on the ground that the prosecution failed to show by clear and convincing evidence that Connelly had effectively waived his *Miranda* rights. *People v. Connelly*, 702 P.2d at 728-29.

SUMMARY OF ARGUMENT

Where the police take no action to elicit a suspect's confession, the due process clause of the fourteenth amendment has no application. The Colorado Supreme Court suppressed the respondent's confession as "involuntary" despite the fact that the police took no action to induce it. The Colorado Supreme Court erred.

The voluntariness of a waiver turns on precisely the same question at issue in the determination of the "voluntariness" of a confession: whether the police improperly exerted pressure on someone to talk. Where the police advise a suspect of his *Miranda* rights and he admittedly understands them, his waiver of rights is voluntary when the police exert no pressure to induce him to talk.

ARGUMENT

I.

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT REQUIRE SUPPRESSION OF A CONFESSION AS "INVOLUNTARY" ABSENT ANY ACTION BY THE POLICE TO ELICIT THE CONFESSION.

The fourteenth amendment provides: "No state shall . . . deprive any person of life, liberty or property with-

out due process of law. . . ." U.S. Const. amend XIV, § 1. This clause was " 'intended to secure the individual from the arbitrary exercise of powers of government,' " *Hurtado v. California,* 110 U.S. 516, 527 (1884) (quoting *Bank of Columbia v. Okely,* 4 Wheat. 235, 244 (1819)). "Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty or property." *Daniels v. Williams,* 106 S. Ct. 662, 665 (1986) (emphasis in original).

The Court first applied the due process clause to confessions in state cases in *Brown v. Mississippi,* 297 U.S. 278 (1936). Because the petitioners' confessions were extracted through brutal torture,[5] the court had little difficulty[6] concluding that the admission of the confessions into evidence violated due process. *Brown,* 297 U.S. at 286. As courts considered coerced confession cases with increasing frequency, they used "different terms to express the test by which to judge the inadmissibility of a confession, such as 'forced', 'coerced', 'involuntary', 'extorted', 'loss of freedom of will.' " *Ashcraft v. Tennessee,* 322 U.S. 143, 159 (1944) (Jackson, J., dissenting). By 1960, the court described the due process inquiry that

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[5]One petitioner was repeatedly hung from a tree, tied, and whipped. *Brown v. Mississippi,* 297 U.S. 278, 281 (1936). Other petitioners were whipped with a leather strap with buckles on it. *Id.* at 282.

[6]The Court remarked: "It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners . . . ." *Brown v. Mississippi,* 297 U.S. at 286.

originated in *Brown* by the "convenient shorthand" of asking whether a confession was "involuntary." *Blackburn v. Alabama*, 361 U.S. 199, 207 (1960); *accord Miller v. Fenton*, 106 S. Ct. 445, 449 (1985); *Schneckloth v. Bustamonte*, 412 U.S. 218, 280-81 & n.7 (1973) (Marshall, J., dissenting) (the labels "voluntary" and "involuntary" "are shorthand labels for an assessment of the police behavior in light of the particular characteristics of the individual"). The due process foundation of the inquiry, of course, never varied: the test always required some action by the government. *Compare Brown v. Mississippi*, 297 U.S. at 286 ("The due process clause requires 'that *state action* . . . shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'.") (emphasis added; citation omitted) *with Miller v. Fenton*, 106 S. Ct. at 449 ("[*T*]*actics for eliciting* inculpatory statements must fall within the broad constitutional boundaries imposed by the Fourteenth Amendment's guarantee of fundamental fairness.") (emphasis added).

The Court has recognized that the due process inquiry into "voluntariness" reflects a "complex of values." *Blackburn v. Alabama*, 361 U.S. at 207. At the core of the "complex" lies the notion of fundamental fairness. *E.g.*, *Brown v. Mississippi*, 297 U.S. at 285-86; *see* 3 J. Wigmore, *Evidence* § 826(c) (J. Chadbourn rev. 1970). Because our legal system is accusatorial, not inquisitorial, confessions extracted through official coercion may not stand. *Rogers v. Richmond*, 365 U.S. 534, 540-41 (1961). Such confessions offend due process regardless of their reliability. *Id.*; *Lisenba v. California*, 314 U.S. 219, 236 (1941); *see Jackson v. Denno*, 378 U.S. 368 (1964).

Whether a confession is "voluntary" or "involuntary" turns on the totality of circumstances. *Mincey v. Arizona,* 437 U.S. 385, 401 n.17 (1978); *Culombe v. Connecticut,* 367 U.S. 568, 606 (1961). There is no "single litmus-paper test." *Culombe,* 367 U.S. at 601. The Court has considered several factors relevant to the test: some reflect personal traits of the accused, but many more reflect the characteristics of the detention and interrogation. *See* 3 J. Wigmore, *Evidence* § 826(c) at 252 n.11 (J. Chadbourn rev. 1970) (listing more than 29 factors). The Court has deemed some characteristics of the detention and interrogation so offensive that they need not be balanced against any personal traits of the accused; rather, those characteristics *per se* offend due process. *See, e.g., Ashcraft v. Tennessee,* 322 U.S. at 154 (36 hour interrogation is "so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear").

On the other hand, the Court has never concluded that any personal trait of an accused is sufficient to render his confession "involuntary." Personal traits are not in themselves coercive: "Rather they [are] relevant only in establishing a setting in which actual coercion might have been exerted to overcome the will of the suspect." *Procunier v. Atchley,* 440 U.S. 446, 454 (1971).

In the 50 years since the Court first held that the due process clause prohibits coerced confessions, the Court has found due process violated only where there has been some coercive official conduct.[7] There was none here. Un-

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[7]*Beecher v. Alabama,* 408 U.S. 234 (1972) (confession was part of stream of events flowing from grossly coercive nature of

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disputed evidence establishes that the respondent first spoke without any inducement whatsoever on the part of

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petitioner's arrest); *Darwin v. Connecticut*, 391 U.S. 346 (1968) (30 to 48 hour incommunicado detention; refusal to allow petitioner's attorneys to speak with petitioner); *Greenwald v. Wisconsin*, 390 U.S. 519 (1968) (deprivation of medication, sleep, and food); *Brooks v. Florida*, 389 U.S. 413 (1967) (14 day incommunicado detention in a "windowless sweatbox"; meager food and water); *Beecher v. Alabama*, 389 U.S. 35 (1967) (threats of violence; interrogation while petitioner was in intense pain after effect of morphine dissipated); *Clewis v. Texas*, 386 U.S. 707 (1967) (incommunicado detention and interrogation; deprivation of sleep and food); *Davis v. North Carolina*, 384 U.S. 737 (1966) (16 day incommunicado detention; daily interrogation; limited provender); *Haynes v. Washington*, 373 U.S. 503 (1963) (16 hour incommunicado detention; repeated refusal to allow petitioner to call his wife); *Lynumn v. Illinois*, 372 U.S. 528 (1963) (threats to take away petitioner's children and to cut off public assistance); *Townsend v. Sain*, 372 U.S. 293 (1963) (use of truth serum; denial of heroin to addict); *Gallegos v. Colorado*, 370 U.S. 49 (1962) (5 day incommunicado detention); *Culombe v. Connecticut*, 367 U.S. 568 (1961) (intimidation; 4 day detention); *Reck v. Pate*, 367 U.S. 433 (1961) (8 day incommunicado detention; 6-7 hours of interrogation for 4 days; denial of food); *Rogers v. Richmond*, 365 U.S. 534 (1961) (6 hour interrogation by 3 or more officers; threatened interrogation of petitioner's wife); *Blackburn v. Alabama*, 361 U.S. 199 (1960) (8-9 hour interrogation in a small room); *Spano v. New York*, 360 U.S. 315 (1959) (8 hour interrogation by as many as 15 officers; deceptive use of petitioner's friend to falsely arouse petitioner's sympathy); *Payne v. Arkansas*, 356 U.S. 560 (1958) (3 day incommunicado detention; threats of mob violence; denial of food); *Fikes v. Alabama*, 352 U.S. 191 (1957) (repeated questioning over 5 day period; incarceration in state prison far from petitioner's home; segregation from all other prisoners); *Leyra v. Denno*, 347 U.S. 556 (1954) (lengthy interrogation; deceptive use of psychiatrist masquerading as general practitioner to treat petitioner's ailment); *Gallegos v. Nebraska*, 342 U.S. 55 (1951) (25 day detention before presentment to magistrate); *Harris v. South Carolina*, 338 U.S. 68 (1949) (5 day incommunicado detention; repeated violence and interrogation); *Turner v. Pennsylvania*, 338 U.S. 62 (1949) (5 day interrogation by relays of officers for 4-6 hours

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the officer. The respondent had not been detained nor had he been asked a single question. Absent state action, there was no due process violation.[8]

II.

WHERE A SUSPECT IS ADVISED OF HIS MIRANDA RIGHTS AND ADMITTEDLY UNDERSTANDS THEM, HIS WAIVER OF RIGHTS IS VOLUNTARY IN THE ABSENCE OF POLICE ACTION TO INDUCE THE WAIVER.

The fifth amendment provides: "No person . . . shall be compelled, in any criminal case, to be a witness against himself . . . ." U.S. Const. amend. V. In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the Court extended the

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per day); *Watts v. Indiana*, 338 U.S. 49 (1949) (6 day detention; interrogation by relays of officers); *Lee v. Mississippi*, 332 U.S. 742 (1948) (threats of violence); *Haley v. Ohio*, 332 U.S. 596 (1948) (5 hour interrogation by relays of officers; 3 day detention after confession); *Ashcraft v. Tennessee*, 327 U.S. 274 (1946) (36 hour detention); *Malinski v. New York*, 324 U.S. 401 (1945) (forced stripping to humiliate and frighten petitioner); *Lyons v. Oklahoma*, 322 U.S. 596 (1944) (physical abuse and prolonged interrogation); *Ward v. Texas*, 316 U.S. 547 (1942) (nocturnal removal from county; threats); *Vernon v. Alabama*, 313 U.S. 547 (1941) (violence); *Lomax v. Texas*, 313 U.S. 544 (1940) (forced stripping); *Canty v. Alabama*, 309 U.S. 629 (1940) (incommunicado detention); *Chambers v. Florida*, 309 U.S. 227 (1940) (7 day incommunicado detention); *White v. Texas*, 309 U.S. 631 (1940) (7 day incommunicado detention; nightly whippings); *Brown v. Mississippi*, 297 U.S. 278 (1936) (repeated whippings).

[8]Although the due process clause of the fourteenth amendment was not violated, the inquiry whether the confession should be excluded from evidence as a matter of Colorado evidence law remains for the Colorado courts to determine. *See Lisenba v. California*, 314 U.S. 219, 236 (1941); Dix, *Mistake, Ignorance, Expectation of Benefit, and the Modern Law of Confessions*, 1975 Wash. U.L.Q. 275, 291-92.

fifth amendment privilege to "custodial interrogation": "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way" *See Michigan v. Tucker,* 417 U.S. 433, 442-43 (1974). To protect the privilege the Court imposed procedural safeguards designed to dispel the compulsion inherent in custodial interrogation. *Miranda,* 384 U.S. at 467; *North Carolina v. Butler,* 441 U.S. 369, 373 (1979). Absent custodial interrogation, no such procedural protections are required. *E.g., Berkemer v. McCarty,* 104 S. Ct. 3138 (1984). "Any statement given freely and voluntarily without any compelling influence is, of course, admissible in evidence." *Miranda,* 384 U.S. at 478.

Before the police question a suspect who has been taken into custody, they must give the suspect *Miranda* warnings if his statements are to be admissible into evidence. *Miranda,* 384 U.S. at 379; *Michigan v. Tucker,* 417 U.S. at 443. The prosecution must show that a suspect voluntarily, knowingly, and intelligently waived his rights in order to introduce his statements against him in court. *Oregon v. Bradshaw,* 103 S. Ct. 2830, 2834-35 (1983); *Edwards v. Arizona,* 451 U.S. 477, 482 (1980); *Tague v. Louisiana,* 444 U.S. 469, 470 (1980); *North Carolina v. Butler,* 441 U.S. 369, 373 (1979); *Miranda,* 384 U.S. at 444. *Miranda* recognized that if a statement was made after lengthy or incommunicado detention, that would be "strong evidence that the accused did not validly waive his rights." 384 U.S. at 476. "Moreover, any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege." *Id.*

Miranda was less specific about what would constitute an effective waiver.[9] Although an express statement waiving the rights to silence and to counsel is "strong proof" of an effective waiver, *North Carolina v. Butler,* 441 U.S. at 373; *accord Oregon v. Elstad,* 105 S. Ct. 1285, 1298 (1985), ultimately such an express statement is neither necessary nor sufficient. *North Carolina v. Butler,* 441 U.S. at 373. Not only must the prosecution show that the waiver was knowing and intelligent, but it must also demonstrate that the waiver was voluntary. *Edwards v. Arizona,* 451 U.S. at 482. The inquiries are discrete. *Moran v. Burbine,* 54 U.S.L.W. 4265 (U.S. March 10, 1986); *Edwards v. Arizona,* 451 U.S. at 484; *McCormick on Evidence,* § 153 (E. Cleary 3d ed. 1984).

By showing that a suspect (1) was told of his right to remain silent and right to counsel, (2) understood those rights, yet (3) intentionally relinquished those rights, the prosecution establishes that the suspect knowingly and intentionally waived his *Miranda* rights. *Moran v. Burbine,* 54 U.S.L.W. 4265; *see Edwards v. Arizona,* 451 U.S. at 483-84. By showing that the state exerted no pressures on a suspect, the prosecution establishes that the suspect voluntarily waived his rights. *See Moran v. Burbine,* 54 U.S.L.W. at 4267 ("The voluntariness of the waiver is not at issue . . . . [T]he record is devoid of any suggestion that police resorted to physical or psychological pressure to elicit the statements."); *Michigan v. Mosley* 423 U.S. 96, 111 (1975) (White, J., concurring) ("voluntariness" is

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[9] "An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement *could* constitute a waiver." *Miranda,* 384 U.S. at 475 (emphasis added).

the standard by which waiver of previously claimed right to remain silent by a "properly informed" defendant should be judged); Dix, *Waiver in Criminal Procedure: A Brief for More Careful Analysis*, 55 Tex. L. Rev. 193, 199-201 (1977); Tigar, *Foreword: Waiver of Constitutional Rights: Disquiet in the Citadel*, 84 Harv. L. Rev. 1, 25 (1970); *cf. Wyrick v. Fields*, 459 U.S. 42, 53-54 (1982) (Marshall, J., dissenting) ("Since the underlying purpose of the [fifth amendment] privilege . . . is to prevent the State from coercing an individual to give evidence against himself, it makes sense to find a waiver of the privilege where a suspect's conduct provides assurance that his statements were made voluntarily.") Each discrete inquiry requires a review of the totality of the circumstances surrounding the waiver. *Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979); *see Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

The Colorado Supreme Court suppressed as a violation of *Miranda* all of the statements that the respondent made after he was first given the warnings.[10] Although the evidence showed that the respondent both understood and intentionally relinquished his *Miranda* rights, the Colorado Supreme Court held that the prosecution had failed to prove by clear and convincing evidence that the respondent

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[10]The Colorado Supreme Court improperly treated as analytically similar all the statements that the respondent made after he was first given the *Miranda* warnings. Yet the first statement Connelly made after being advised of his rights—that in late 1982 he had killed a young girl—was made when Connelly was neither in custody, *Berkemer v. McCarty*, 104 S.Ct. 3138 (1984), nor being subjected to interrogation, *Rhode Island v. Innis*, 446 U.S. 291 (1980). The first statement Connelly made after being advised of his rights, therefore, did not violate *Miranda*.

had effectively waived his rights. The Colorado Supreme Court therefore necessarily concluded that the respondent had not voluntarily waived his *Miranda* rights.

The Colorado Supreme Court applied an incorrect standard to determine the voluntariness of the respondent's waiver. By narrowly focusing on the respondent's subjective volitional capacity, the court not only failed to take into account the totality of the circumstances, *see Fare v. Michael C.*, 442 U.S. at 724-25, but it also overlooked the values that underlie the fifth amendment: protection of individuals against official coercion. *United States v. Washington*, 431 U.S. 181 (1977).

The fourteenth amendment secures against state invasion the same privilege that the fifth amendment guarantees against federal infringement: the right to remain silent "unless one chooses to speak in the unfettered exercise of his own will." *Malloy v. Hogan*, 378 U.S. 1, 8 (1964); *accord Davis v. North Carolina*, 384 U.S. 737, 740 (1966); *see* Grano, *Voluntariness, Free Will, and the Law of Confessions*, 65 Va. L. Rev. 859, 926-37 (1979) (arguing that in the context of custodial interrogation the fifth amendment privilege duplicates the protection of the due process test of "voluntariness"). The unfettered exercise of one's own will refers to the absence of official coercion, not to any subjective psychological condition. *Oregon v. Elstad*, 105 S. Ct. 1285, 1291 (1985) (the fifth amendment is not "concerned with moral and psychological pressures emanating from sources other than official coercion.") Just as improper pressure by the police on a suspect renders a suspect's confession "involuntary," in violation of the due process clause of the fourteenth amendment, so too does improper pressure by the police on a suspect render a

suspect's waiver involuntary. *See generally* Schulhofer, *Confessions and the Court,* 79 Mich L. Rev. 865, 880 (1981). The requirement that a waiver be voluntary simply means that the waiver must not be the product of official overreaching. *See Moran v. Burbine,* 54 U.S.L.W. at 4267 ("Once it is determined that a suspect's [knowing and intelligent] decision not to rely on his rights was *uncoerced,* . . . the analysis is complete and the waiver is valid as a matter of law." (emphasis added). Absent some official coercion, the fifth amendment has no application: "Indeed, far from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently desirable." *United States v. Washington,* 431 U.S. at 181, *cited with approval in Oregon v. Elstad,* 105 S. Ct. at 1291.

Nothing in the record below suggests the police in any way induced the respondent's waiver. Accordingly, the waiver was voluntary.

CONCLUSION

The decision of the Colorado Supreme Court should be reversed.

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